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MAJOR LEAGUE BASEBALL PROPERTIES, INC.; and
SAN FRANCISCO BASEBALL ASSOCIATES LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

<p>GOGO SPORTS, INC.,</p> <p>Plaintiff and Counter-claim Defendant,</p> <p>vs.</p> <p>MAJOR LEAGUE BASEBALL PROPERTIES, INC.; and THE SAN FRANCISCO GIANTS BASEBALL CLUB,</p> <p>Defendants and Counter-claim Plaintiffs.</p> <p>AND RELATED COUNTER-CLAIM.</p>	<p>) Case No. CV12-cv-00528-EJD</p> <p>) Hon. Edward J. Davila</p> <p>) STIPULATION AND [PROPOSED] CONSENT</p> <p>) JUDGMENT AND PERMANENT</p> <p>) INJUNCTION</p> <p>) Complaint Filed: September 27, 2011</p>
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WHEREAS, Defendant and Counter-claim Plaintiff San Francisco Baseball Associates LLC (“Giants Club”) is the owner of the SAN FRANCISCO GIANTS MAJOR LEAGUE BASEBALL club; and

WHEREAS, the Giants Club, its predecessors, their affiliated and related entities, licensees and/or sponsors have long used and are using various marks comprising or containing stylizations of the word “San Francisco” associated with the Giants Club and claims they are distinctive, including without limitation, the stylized script SAN FRANCISCO mark depicted below (the “Giants Stylized Script SAN FRANCISCO Mark”):



and the stylized block SAN FRANCISCO marks depicted below (the “Giants Stylized Block SAN FRANCISCO Marks”):



all individually used either alone or with other word, letter and/or design elements (collectively, the Giants Stylized Script SAN FRANCISCO Mark and the Giants Stylized Block SAN FRANCISCO Marks are the “Giants Stylized SAN FRANCISCO Marks”); all of the foregoing alone or in combination with the Giants Club’s other marks, including, without limitation, marks comprising or containing the letters “SF” and/or

the words GIANTS, GIANT and/or GIGANTES, including, but not limited to the marks depicted below:



(collectively, the “Giants Club SF and GIANTS Marks”), and/or the Giants Club’s trade dress colors of orange, or the combined colors of orange and black, orange and white and/or cream, or orange, white and/or cream and black (the “Giants Club Trade Dress Colors”) and/or other trade dress of the Giants Club, including, but not limited to, the distinctive combination of designs, marks, logos, names and/or other elements used on the Giants Club’s uniforms or components thereof and on various items of apparel sold under license from the Giants Club and/or MLB, including, without limitation, the unique striping and positioning of elements used on the Giants Club’s uniforms (collectively, together with the Giants Club Trade Dress Colors, the “Giants Club Trade Dress”) on or in connection with baseball games and exhibitions, and a wide variety of goods and services, and may adopt additional names, marks and trade dress in the future, alone or with other word, letter and/or design elements (collectively, together with the Giants Stylized SAN FRANCISCO Marks, the Giants Club SF and GIANTS Marks, and the Giants Club Trade Dress referred to herein as the “Giants Club Marks”); and

WHEREAS, the Giants Club owns United States Registration Nos. 1,314,552, 1,340,707, 1,522,132, 1,527,781, 1,532,656, 1,544,375, 1,544,379, 2,529,743, 2,600,709, 2,688,009, 3,313,920, 3,313,921, 3,320,531, and 3,797,622 and Application Serial No. 85/304,372 for said trademarks and service marks; and

WHEREAS, San Francisco Baseball Associates LLC was formerly San Francisco Baseball Associates L.P. and became San Francisco Baseball Associates LLC by conversion, which was recorded in the United States Patent and Trademark Office ("USPTO") Assignment Branch at Reel 4882, Frame 0374 on October 16, 2012; and

WHEREAS, through long and substantial use, the Giants Club SF and GIANTS Marks, including, without limitation, the Giants Stylized SAN FRANCISCO Marks depicted above and on the attached Exhibit A, have become associated by consumers, fans, the trade, press, media and public with the Giants Club and have developed considerable goodwill associated with the Giants Club; and

WHEREAS, MLBPA acts as the licensing agent for the Office of the Commissioner of Baseball (the "BOC"), the Giants Club, the other individual Major League Baseball clubs (which, together with the Giants Club, and their respective affiliated or related entities are referred to as "MLB Clubs" collectively, or "MLB Club," individually) and all of their respective affiliated or related entities (collectively, the "MLB Entities") and is responsible for enforcement and protection of the trademark rights of the MLB Entities; and

WHEREAS, the MLB Entities, their predecessors, affiliates, licensees and sponsors have long used and/or are using various marks comprising or containing stylizations of geographic designations associated with each of the MLB Clubs, as shown in Exhibit A attached hereto and incorporated herein, alone or with other word, letter and/or design elements (collectively, the "MLB Geographic Stylization Marks"); all of the foregoing alone or in combination with particular trade dress color combinations of the particular MLB Clubs (the "MLB Clubs Trade Dress Colors") and other trade dress of the MLB Clubs, including, but not limited to, the distinctive combination of designs and elements used on the MLB Clubs' uniforms or components thereof and on various items of apparel sold under license from the MLB Clubs and/or MLBPA (collectively, the "MLB

1 Clubs Trade Dress”), as well as various of the other MLB Clubs marks, on or in connection with
 2 baseball games and exhibitions, and a wide variety of goods and services, and may adopt additional
 3 names, marks and trade dress in the future, alone or with other word, letter and/or design elements
 4 (collectively, together with the MLB Geographic Stylization Marks, the MLB Clubs Trade Dress,
 5 and the various other MLB related marks of the MLB Clubs, referred to herein as the “MLB
 6 Marks”); and

7 WHEREAS, numerous of the MLB Marks are the subject of trademark registrations and
 8 applications around the world; and

9 WHEREAS, through long and substantial use, the MLB Marks have developed goodwill
 10 associated with the MLB Entities; and

11 WHEREAS, Plaintiff and Counter-claim Defendant Gogo Sports, Inc. (“Gogo”) owns a
 12 registration on the Supplemental Register of the USPTO for the stylized script version of the words
 13 San Francisco California as depicted below (the “Gogo Script SAN FRANCISCO Mark”):




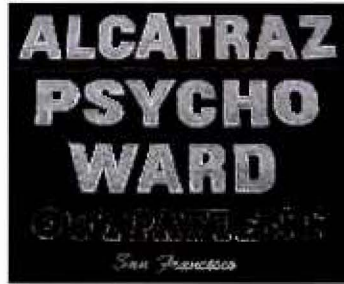
14
 15
 16
 17 Supplemental Registration No. 3933119 for “caps; hats; headwear; jackets; shirts; sweat shirts;
 18 tops” in International Class 25 (the “Gogo Supplemental Registration”); and

19 WHEREAS, on March 31, 2011, Gogo filed in the USPTO a use-based application to
 20 register the mark SAN FRANCISCO in block stylized letters and a design containing the words
 21 CITY BY THE BAY GOLDEN STATE CALIFORNIA, as depicted below (the “Gogo Stylized
 22 Block SAN FRANCISCO and Design Mark”):



Application Serial Number 85/282,274, for “aprons; bandanas; caps; hooded sweatshirts; jackets; sweat shirts; t-shirts” in International Class 25 (the “Gogo Application”); and

WHEREAS, Gogo owns two registrations for marks that incorporate the word SAN FRANCISCO in the following stylization:  (the “Gogo SAN FRANCISCO (Stylized) Element”), namely, Registration No. 4,050,554 for the stylized mark ALCATRAZ PSYCHO WARD OUTPATIENT SAN FRANCISCO, as depicted here:



and Registration No. 4,039,731 for the stylized mark PROPERTY OF ALCATRAZ PENITENTIARY REJECT TOO CUTE SAN FRANCISCO, as depicted here:



both for “caps; hats; headwear; jackets; shirts; sweat shirts; tops” in International Class 25; and

WHEREAS, on September 7, 2011, MLBP, acting in its capacity as agent for and on behalf of the Giants Club, sent a demand letter to Gogo objecting to Gogo’s use and registration of the Gogo Script SAN FRANCISCO Mark; and

WHEREAS, on September 27, 2011, Gogo filed an action in the United States District Court for the Central District of California, Case No. 2:11-cv-07992-JHN-JEMx, entitled Gogo Sports Inc. v. Major League Baseball Properties, Inc. and The San Francisco Giants Baseball Club, for a declaratory judgment that its Gogo Script SAN FRANCISCO Mark was not infringing any trademark rights of the Giants Club; and

WHEREAS, on December 7, 2011, the Giants Club and MLBPA filed an answer and counterclaims in the declaratory judgment action brought by Gogo, asserting various trademark claims under federal and state law alleging that the Gogo Script SAN FRANCISCO Mark violated the Giants Club's rights in the Giants Stylized Script SAN FRANCISCO Mark and also seeking cancellation of the Gogo Supplemental Registration; and

WHEREAS, on December 7, 2011, the Giants Club and MLBPA also filed a motion seeking to transfer venue of the pending litigation with Gogo to the United States District Court for the Northern District of California; and

WHEREAS, on January 26, 2012, the Giants Club's and MLBPA's motion to transfer was granted, and the action was subsequently assigned case number CV12-cv-00528-EJD and is currently pending in this Court; and

WHEREAS, on December 22, 2011, the Giants Club commenced an opposition proceeding against the Gogo Application for the Gogo Stylized Block SAN FRANCISCO and Design Mark captioned San Francisco Baseball Associates LLC (by conversion from San Francisco Baseball Associates L.P.) v. Gogo Sports Inc., Opposition No. 91203112 pending in the Trademark Trial and Appeal Board ("TTAB") of the USPTO (the "Opposition"), which has been suspended on consent of the parties, and

WHEREAS, MLBPA has raised objections to various other stylized geographic marks and/or designs displayed by Gogo on its website in connection with the offering and/or promotion of clothing, including those displayed below, claiming that such marks and/or designs infringe various of the MLB Marks (the "Additional Gogo Geographic Stylizations At Issue") as shown below:

Various MLB Marks at Issue



Additional Gogo Geographic Stylizations At Issue





; and

WHEREAS, the parties have entered into a settlement agreement (“Settlement Agreement”) and have stipulated to entry of this Consent Judgment and Permanent Injunction on Counter-claim Plaintiffs Giants Club’s and MLB’s counterclaims against Gogo,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, and the parties hereby request that this Court Order, that

1. The Court has jurisdiction over the subject matter herein and over the parties who have consented to entry of this Consent Judgment and Permanent Injunction.

2. Subject to the terms and conditions set forth in the Settlement Agreement, Gogo or any persons or entities in active concert or participation with it shall not hereafter use, seek to register or register, or authorize others to use, seek to register or register on or in connection with any and all goods or services (i) the Giants Club Marks, including, without limitation, the Giants Stylized Script SAN FRANCISCO Mark, the Giants Stylized Block SAN FRANCISCO Marks, the Giants Club SF and GIANTS Marks, and the Giants Club Trade Dress or any other marks or trade dress confusingly similar to any of the foregoing marks or trade dress, including, but not limited to, the Gogo Script SAN FRANCISCO Mark or the stylized “San Francisco” component of the Gogo Stylized Block SAN FRANCISCO and Design Mark or the Gogo SAN FRANCISCO (Stylized) Element; (ii) the MLB Geographic Stylization Marks or any other marks confusingly similar thereto, including, without limitation, the Additional Gogo Geographic Stylizations At Issue; (iii) the word “San Francisco” in combination with the Giants Club Trade Dress Colors; (iv) any other geographic designation corresponding to the geographic location of an MLB Club in combination with the MLB Marks, including, without limitation, the MLB Clubs Trade Dress Colors and/or the MLB Geographic Stylization Marks, or any marks or trade dress similar thereto; (v) the geographic designations in the stylizations attached hereto as Exhibit B (the “Rejected Geographic Stylization Marks”); and (vi) any trademarks, service marks, domain names, designs, trade dress features, stylizations, images, indicia and/or names, including without limitation, geographic designations, in any form or manner that resemble the lettering, designs, stylizations, marks, slogans, icons, logos, mascots or components of the MLB Marks, including, without limitation the Giants Club Marks, or that are likely to be confused with the MLB Marks, including, without limitation the Giants Club Marks or to suggest that Gogo or its goods or services are in any way associated or affiliated with, endorsed or sponsored by, or that Gogo is a sponsor of, the Giants Club, MLBP, any of the other MLB Clubs, or other MLB Entities.

3. In the event that Gogo uses, seeks to register or registers or authorize others to use, seek to register or register a “tail” or “underlining” design feature in connection with any mark, design or name, including, without limitation, any geographic stylizations in connection with any geographic designation used by MLBP, Gogo will use, seek to register or register or authorize

1 others to use, seek to register or register only the particular "tail" design permitted pursuant to the
2 terms of the Settlement Agreement.

3 4. Gogo's claims for declaratory relief are hereby dismissed with prejudice.

4 5. Each party shall bear its own costs and attorneys' fees in connection with this case.

5 6. This Court shall retain continuing jurisdiction over the parties to this Consent
6 Judgment and Permanent Injunction and over the subject matter of the action for the purposes of
7 interpreting and enforcing the terms of this Consent Judgment and Permanent Injunction and the
8 Settlement Agreement.

9 7. All of the parties hereto consent to the issuance and entry of this Consent Judgment
10 and Permanent Injunction and waive the right to appeal from or otherwise contest this Consent
11 Judgment and Permanent Injunction, which may be entered in the form and content set forth above
12 without further notice to any party.

13 8. Nothing in this Consent Judgment and Permanent Injunction shall relieve either
14 party of any further obligations set forth in the Settlement Agreement.

15 9. The undersigned counsel represent that they have been authorized to execute this
16 Stipulation and [Proposed] Consent Judgment and Permanent Injunction.

1 DATED: April 24, 2014

MOHAJERIAN INC.
AL MOHAJERIAN, ESQ.
AMISH SHAH, ESQ.

By: 

Al Mohajerian, Esq.

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Plaintiffs MAJOR LEAGUE BASEBALL
PROPERTIES, INC.; and SAN FRANCISCO
BASEBALL ASSOCIATES, L.P.

15 Pursuant to Stipulation and Good Cause Being Shown Therefor, It Is So Ordered:

17 DATE: _____

Hon. Edward J. Davila
U.S. District Court Judge